IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 24329 of 2004

Between:

1. Government of Andhra Pradesh, Rep. by its Secretary, Education

Department, Secretariat, Hyderabad.
2. The Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad.
3. The Regional Joint Director of Collegiate Education, Warangal.
4. The Principal, SKNR Government Degree College, Jagityal, Karimnagar

District.
5. The Principal, Government Degree College for Men,
Adilabad, Adilabad District.

..... PETITIONERS

AND

K. Mukunda Reddy, S/o. Raghava Reddy,
SKNR Government Degree College, Jagityal, Karimnagar District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ, Order or direction, calling for the records relating to the Order dated 21-3-2003 in O.A.No. 5940/02 passed by the Hon'ble Administrative Triubnal, Hyderabad Bench and quash or set aside the same,

Counsel for the Petitioner:THE ADVOCATE GENERAL

Counsel for the Respondent .: MR.P.V.SUBRAHMANYA SARMA

The Court made the following order at the stage of admission.

-

-

-

-

-

-

-

ORDER: (Per the Hon'ble Sri Justice G.Bikshapathy)

This Writ Petition is filed by the Government assailing the order dated 21-3-2003 passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No. 5940 of 2002 and C.A.No. 438 of 2002 in O.A.No. 3662 of 1995.

2. The respondent herein was the applicant before the Tribunal. He was working as a Store Keeper in SKNR Degree College, Jagityal. He initially went on leave in the year 1979 and the leave was extended from time to time. However, it is the case of the applicant before the Tribunal that he reported to duty on 1-4-1987, but he was not allowed to join duty. However, it appears that the matter was referred to higher authority. Ultimately, he was removed from service on 12-7-1991. The said order came to be challenged in O.A.3662 of 1995. The learned Tribunal after consideration set aside the impugned orders before it on 22.2.2001 on the ground of failure to follow the principles of natural justice and the respondent was directed to be reinstated with consequential benefits. The respondent was reinstated into service on 26-6-2001 and enquiry was initiated against him in pursuance of the observation made by the Tribunal. Ultimately, he retired from service on 30-9-2003. But, however, enquiry initiated against the respondent is in progress and no final order has been passed. In the mean while, the respondent filed another O.A.No. 5940 of 2002 challenging the notice issued by the Government dated 1-6-2001 proposing to hold enquiry. The said order came to be challenged in O.A.No. 3662/95. He filed C.A.No. 438/2002 alleging that the order passed by the Tribunal in O.A.No.3662 of 1995 to the extent of granting consequential benefits to the

respondent was not given. The Tribunal, however, after considering the matter ultimately held that the Government is competent to proceed with the matter by conducting fresh enquiry and therefore the said O.A. was ordered accordingly. But, however, the Tribunal while disposing of O.A.3662 of 1995 and C.A.438 of 2002 simultaneously observed that the respondent-employee shall be deemed to have been under suspension from the date of giving effect to his termination to the date of his reinstatement. Aggrieved by the aforesaid observation, the present Writ Petition is filed.

3. The learned Advocate General, however, submits that the order passed by the Tribunal is beyond the prayer made by the employee. What was challenged in O.A.No. 5940 of 2002 is the action of the Government in proceeding against the employee by conducting an enquiry. But, there was no prayer for treating the period of his absence right from 1979 till the date of reinstatement as in service or under suspension. But, however, the Tribunal, without there being any specific prayer granted the relief and the same is liable to be set aside.

4. The learned counsel for the respondent submits that when the order of termination is set aside, consequently, the course left open to the Government is to follow Rule 8 (4) of the AP Civil Services (CCA) Rules, 1991(for short “the Act”). In the instant case, since enquiry was directed to be held under Rule 8(4) of the Act and the Tribunal has granted subsistence allowance to the respondent for the period from 1979 to 1991 treating the same as period of suspension, the order does not suffer from any irregularity.

5. We have considered the contention of the learned counsel of both parties.

6. The issue that arises for consideration is whether the order passed by the Tribunal declaring that the employee is deemed to be under suspension from the date of his termination till reinstatement is sustainable.

7. Admittedly, the employee was on leave from 1979 and it was extended from time to time at his requests. Even though he was on leave, the period cannot be converted as period of suspension, under the Rules, inasmuch as the regularisation of the period of absence has to be only taken care of at the time of final orders. In the instant case, the enquiry is still pending. In such a situation, it was not proper for the Tribunal to declare the period of absence from 1979 to 1991 as suspension. It is for

the authority to regularize the period of absence, in accordance with the Rules either in C.C.A. Rules, Leave Rules or F.R. as the case may be.

8. Under these circumstances, we find that the orders passed by the Tribunal to the effect that the employee's absence shall be deemed to have been under suspension from the date of termination till reinstatement is not sustainable and accordingly, it is set aside. However, we leave it open to the respondent-employee to challenge the regularization of the period of his absence when the final orders are passed by the Government in pursuance of the notice issued on 1-06-2001. It is also further directed that the Government shall pass appropriate orders after conducting enquiry within a period of four months from the date of receipt of this order.

9. The Writ Petition is allowed. No order as to costs.

G.Bikshapathy, J.

P.S.Narayana, J.

31st January, 2005.

KM

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Registrar, A.P.A.T., Hyderabad.

2. The Secretary, Education Department,

Government of Andhra Pradesh, Secretariat, Hyderabad.

3. The Commissioner of Collegiate Education, Andhra Pradesh,

Hyderabad.

4. The Regional Joint Director of Collegiate Education, Warangal.

5. The Principal, SKNR Government Degree College, Jagityal,

Karimnagar.

6. The Principal, Government Degree College for Men,Adilabad,

Adilabad District.

7. 2CCs to Advocate General, High Court Buildings, Hyderabad (OUT)

8. 2CD copies

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

-

-

-

-

-

-

-

-

-

WRIT PETITION NO : 24329 of 2004

-

-

-

-

-

-

31st January, 2005.

-

-